THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No. 13144 of 2006

DATED: 25-07-2006

Between:

Moota Satyanarayana.

..Petitioner.

and

The Government of Andhra Prades, represented by its Principal Secretary and others.

..Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.15234 of 2006

ORDER:

Heard both the counsel.

This writ petition is filed for a writ of mandamus declaring the action of the 2nd respondent without conducting any enquiry in the presence of the petitioner and not furnishing a copy of the enquiry report on the basis of which the show cause notice had been issued vide proceedings No.A6/1333/03 Panchayat, dated 02-05-2006 as illegal and arbitrary and violative of Articles 14 and 21 of the Constitution of India and contrary to Sub-section (1) of Section 249 of the Andhra Pradesh Panchayat Raj Act and consequently, to direct the respondents to continue the petitioner as Sarpanch of Nagnoor Gram Panchayat, Karimnagar Mandal and District and thereby conduct regular enquiry by taking into consideration of M.B.records and bills submitted by him to the 3rd respondent and pass such other suitable orders.

The learned counsel for the petitioner had narrated several facts. It is stated in the affidavit filed in support of the petition that a show cause notice was issued to the petitioner by the District Panchayat Officer, vide proceedings No.A6/1333/03/Panchayat, dated -11-2003 stating that why he should not be suspended for the alleged misappropriation of an amount of Rs.83,132/-.

On 06-11-2003 the petitioner had submitted his explanation against the said show cause notice. It is stated that the 2nd respondent had issued another show cause notice dated 04-02-2004 and directed the petitioner to submit his explanation. The petitioner had submitted his explanation on 13-02-2004. Thereafter, the 2nd respondent suspended the petitioner vide proceedings, dated 19-03-3004. It is also stated that this Court was pleased to dispose of W.P.No.6457 of 2004, dated 09-04-2004 with a direction to the petitioner to file a revision under Section 264 of the Andhra Pradesh Panchayat Raj Act, 1994. Accordingly, the petitioner filed a revision petition on 30-04-2004, in which the 1st respondent had confirmed the orders passed by the 2nd respondent vide G.O.Rt.No.1660 dated 27-10-2004 and directed the District Collector to take necessary action for removal of the petitioner from Sarpanch. It is stated that the petitioner was relived from the post of Sarpanch of the Nagnoor Gram Panchayat, vide proceedings, dated 03-11-2004 as per the orders passed by the Government. It is also stated that the petitioner filed W.P.No.22150 of 2002 questioning the said G.O and this Court was pleased to dispose of the said writ petition on 20-01-2005 with a direction to the 1st respondent to consider the appeal filed by the petitioner. Thereafter, the petitioner was reinstated to the post of Sarpanch by the 2nd respondent in his proceedings, dated 22-04-2005. It is stated that 3rd respondent had issued a show cause notice on 27-04-2005 to the petitioner stating that he should pay an amount of Rs.28,347/- by way of challan in favour of Gram Panchayat, Nagnoor as per the orders of the Hon'ble Minister for Panchayat Raj. The 3rd respondent had issued notice

on 15-05-2005 directing the petitioner to appear before the Hon'ble Minister on 19-05-2005 at about 11-00 A.M. The 1st respondent had confirmed the suspension order passed by the 2nd respondent vide G.O.Rt.No.1048 dated 18-06-2005. The 2nd respondent had removed the petitioner from Sarpanch of Nagnoor Gram Panchayat in his proceedings dated 27-06-2005. The petitioner filed a writ petition before this Court challenging the orders of the 1st and 2nd respondents in W.P.No.14445 of 2005 dated 24-02-2006. The 2nd respondent had issued a show cause notice on 06-04-2006 stating that why the petitioner should not be terminated from Sarpanch post since he had misappropriated an amount of Rs.54,785/-. The petitioner had submitted his explanation against the said show cause notice on 20-04-2006 by denying the allegation levelled in the show cause notice. It is stated that the 2nd respondent had passed the impugned proceedings, dated 02-05-2006 and removed the petitioner from the post of Sarpanch of Nagnoor Gram Panchayat without conducting regular enquiry and not furnishing the enquiry report and therefore, the impugned order is contrary to the Division Bench decision rendered in ***D. SATHI REDDY v. COMMISSIONER, PANCHAYAT RAJ, ANDHRA PRADESH, HYDERABAD***[1].

The learned Assistant Government Pleader for Panchayat Raj states that the petitioner is having an effective alternate remedy and hence, the matter need not be remitted to the second respondent for fresh disposal as requested by the petitioner.

Several facts had been narrated in detail in the affidavit filed

in support of the writ petition and the learned counsel for the petitioner placed a strong reliance on the decision cited supra, in which the Division Bench observed at paras 12, 17 and 18 as hereunder:

> It is clear that except in situations mentioned at (a) and (e) above, the Collector may cause an enquiry to be done by the officials of the Panchayat Department. If the enquiry report is the basis for issuing a show-cause notice, there cannot be an adequate opportunity for the Sarpanch to submit the explanation without a copy of the enquiry report being supplied. Therefore, the words "after giving him an opportunity for explanation" appearing in sub-section (1) of Section 249 of the Act should be interpreted as casting a duty on the District Collector to supply a copy of the enquiry report to the Sarpanch. Further, the sub-section (1) gives a right to the Sarpanch to receive a copy of the enquiry report even without there being a demand by him.
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> From a consideration of the authorities to which a reference is made above, we have no hesitation in holding that in any of the situations as mentioned in sub-section (1) of Section 249 of the Act. If the competent authority is placing reliance on any report before issuing a show cause notice the Sarpanch shall have to be supplied with a copy of such report. Failure to do so would not be a sufficient compliance with the principles of natural justice for various reasons stated hereinabove. Therefore, point No.2 is accordingly answered in favour of the petitoner.
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> Point No.1:
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> The learned single Judge observed that unless the Collector considers the matter with reference to the factors mentioned in sub-section (1) of Section 249 of the Act, it cannot be said that the District Collector has formed an opinion. Formation of the opinion by the District Collector has to be preceded by due application of mind which only means recording of reasons. The recording of reasons in the context of Section 249 is nothing but with reference to clauses (i) to (iv) in sub-section (1) of Section 249 of the Act which we have analysed above. We have perused the order passed by the District Collector-the original authority and the order passed by the Commissioner of Panchayat Raj-the appellate authority. We have no reason to take a

view different from the view taken by the learned single Judge which we have extracted above. Therefore it has to be held that both the authorities have not applied their mind before forming opinion in regard to the existence or non-existence of the essential pre conditions for passing an order of removal against the petitioner. Accordingly, point No.1 is answered in favour of the petitioner.

Point No.3.

The learned senior counsel for the respondent Nos. 5 to 9 strenuously and vehemently contended that judicial review is not an appeal. It is an extra-ordinary power to see whether the decision making process suffers from any illegality, impropriety or irrationality. The learned senior counsel further submitted that though perversity in recording a finding of fact, or a finding of fact based on no evidence is an error of law which can be corrected by judicial review, the Court should not entertain a challenge on the ground that there was insufficient or inadequate material before the authorities or on the ground that the evidence was insufficient for recording a finding. To support this submission the learned counsel placed reliance on the oft quoted dictum of the Supreme Court in the celebrated case in SYED YAKOOB v. RADHAKRISHNAN's[2] case (supra). In the said case a Constitution Bench of the Supreme Court, with the majority of 4: 1 held as follows:

"….A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals: these are cases where orders are passed by inferior courts or Tribunals without jurisdiction or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued wherein exercise of jurisdiction conferred on it the Court or Tribunal acts illegally or improperly, as for instance it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a

writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law, which can be corrected by a writ of certiorari. In dealing with this category of cases, however we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court……" (emphasis supplied)

In SYED YAKOOB v. RADHAKRISHNAN's case (supra) the Constitution Bench clearly held that an error of law which is apparent on the face of the record is both an illegality and an impropriety which is amenable to judicial review. If the authority or the Tribunal has recorded a finding of fact which is based on no evidence it is error of law and judicial review is available to correct the same on the ground of illegality and impropriety. If the finding of fact is perverse, it is also an error of law and can be rectified in judicial review. If the District Collector fails to follow the procedure contemplated under sub-section (1) of Section 249 of the Act, there is error of law apparent on the face of record. Even while following the provisions of sub-section (1) of Section 249 of the Act if the District Collector fails to supply a copy of the enquiry report based on which charges are framed then also it is an error of law. If the District Collector while issuing a show cause notice along with a copy of the enquiry report based on which charges are framed, and passes an order in disregard of the essential pre-conditions in clauses (i) to (iv) or either of them the District Collector will be committing the illegality and impropriety. Therefore in either view of the matter we are of the considered opinion that the learned single Judge was right in coming to the conclusion that the 2nd

respondent-the original authority and the 1st respondent-the appellate authority failed to apply their mind to the basic fact as to whether the requirement of sub-section (1) of Section 249 of the act has been fulfilled or not".

In the light of the specific stand taken by the petitioner, this Court is of the considered opinion that the matter to be remitted to the 2nd respondent to conduct appropriate enquiry in accordance with law, especially in the light of the decision of the Division Bench referred to supra.

Accordingly, the impugned order dated 02-05-2006 is set aside and the matter is remitted to the 2nd respondent to consider the questions involved in the matter afresh in the light of the observations made by this Court and also had been observed by the Division Bench in the decision referred to supra.

Accordingly, the Writ Petition is disposed of. No costs.

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P.S.NARAYANA,J

Dated:25-07-2006
sj

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[1] 1999(5) ALD 681 (DB)

[2] AIR 1964 SC 477